



**REGULAR MEETING
ZONING BOARD OF APPEALS
Thursday, May 18, 2023, at 5:00 p.m.
City of New Buffalo
224 W. Buffalo Street
New Buffalo MI 49117
AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Approval of Previous Minutes – April 19, 2023
6. Public Comment
7. Public Hearing
 - a. 446 E. Buffalo (11-62-1150-0013-00-0) - Requests variances for the following: required minimum lot width from 100 feet to 60 feet; side setback from 40 feet to 10 feet.
8. New Business
 - a. 446 E. Buffalo (11-62-1150-0013-00-0) - Requests variance for the following: required minimum lot width from 100 feet to 60 feet; side setback from 40 feet to 10 feet.
9. Adjournment

April 19, 2023

ZONING BOARD OF APPEALS SPECIAL MEETING

5:00 pm

Chair Smith called the meeting to order at 5:03 p.m.

Pledge of Allegiance – ZBA Board members led the Pledge of Allegiance.

Roll Call: Members Cooper, Gabryszewski, Pokuta, Joseph, Chair Smith

City Staff Present: City Manager, Darwin Watson; City Clerk, Amy Fidler

Approval of Agenda: Motion by Member Gabryszewski, seconded by Member Pokuta to approve the agenda:

Roll Call Vote:

AYES: Gabryszewski, Pokuta, Joseph, Cooper, Smith

NAYES:

ABSENT:

ABSTAINED:

Motion Carried, 5-0.

Approval of Previous Minutes – February 9, 2023: Motion by Member Cooper, seconded by Member Joseph to approve the previous minutes from February 9, 2023:

Roll Call Vote:

AYES: Pokuta, Joseph, Cooper, Gabryszewski, Smith

NAYES:

ABSENT:

ABSTAINED:

Motion Carried, 5-0.

Public Comment:

None

Public Hearing:

Chair Smith opened the public hearing for 1 N. Whittaker Street at 5:05 p.m.

1 N. Whittaker (11-62-0340-0233-01-8) - Requests variance for signage permitted in the Central Business District per the City of New Buffalo Zoning Ordinance.

Public Comment:

John Lastina

Jessica Vargas explained and answered the board members questions regarding the applicants request for a variance from the sign ordinance to install (2) two tenant signs on the mechanical screen above the roof line of the building along the US 12 façade. Also, the applicant requested a variance to install internally illuminated signs as part of the entire building package.

April 19, 2023

ZONING BOARD OF APPEALS SPECIAL MEETING

5:00 pm

Chair Smith closed the public hearing for 1 N. Whittaker Street at 5:23 p.m.

New Business

1 N. Whittaker (11-62-0340-0233-01-8) - Requests variance for signage permitted in the Central Business District per the City of New Buffalo Zoning Ordinance.

Motion by Member Cooper, seconded by Member Gabryszewski to deny the variance for 1 N. Whittaker Street as presented as the variance does not meet the conditions cited in Section 21-8 (B) of the Zoning Ordinance:

Roll Call:

Ayes: Cooper, Gabryszewski, Pokuta, Smith

Nays: Joseph

Absent:

Abstained:

Motion Carried: 4-1.

Motion by Member Cooper, seconded by Member Gabryszewski to adjourn the meeting at 5:36 p.m.

Voice vote, motion carried.

amf

Tom Smith, Chair

Amy Fidler, City Clerk



City of New Buffalo Zoning Board of Appeals Staff Report

Hearing Date: May 18, 2023

Project Number:

Applicant: Steven Spielman

Owner: Peter Bernal (Peter Bernal Amended Living Trust)

Subject Property Address: 446 East Buffalo, New Buffalo, MI 49117, #11-62-1150-0013-00-0

Zoning District: General Commercial District (GCD)

Nature of the Request: Allowance of variance(s) to the site development requirements in the General Commercial District (GCD) zoning district as prescribed in the New Buffalo Zoning Ordinance

OVERVIEW

A Zoning Board of Appeals application was received for the construction of eight (8) new storage facilities/residences at 447 East Buffalo. The application was submitted by Steven Spielman, the developer for the project, on behalf of the owner, Peter Bernal.

The submitted application requests the following variance(s):

- Reduction in required side setback from 40 to 10 feet (east side of property)

This property is located in the General Commercial District (GCD); however, it is bordered by properties that are located in the R-2 Medium Density Residential and GCD. The lot at 446 East Buffalo is legally nonconforming.

Article 20, Section 20-2 (A) states:

Existing lot of record. In any zoning district where an existing lot of record which does not abut any lot or lots of record in the same ownership, fails to meet the requirements for minimum lot area, minimum lot width, or both, of the zoning district in which it is located, such lot may be used for the permitted uses of the zoning district, provided that all other dimensional requirements not involving lot area and/or lot width of the zoning district in which such lot is located are met.

Understanding that the property abuts two (2) differently zoned properties (GCD and R-2), the site development requirements are different for construction. When the property abuts non-residentially zoned property, the side yard setback is ten (10) feet. Conversely, when the property abuts non-residentially zoned property, the side yard setback is forty (40) feet.

The Zoning Ordinance provides that in a situation of conflict the more restrictive requirement shall prevail. Therefore, the side yard setback for this project would need to be at forty (40) feet. In order to build the project, as designed, would require a variance for the property (side yard setbacks).



Article 11, Section 11-3 of the New Buffalo Zoning Ordinance (“the Ordinance”) identifies the site development requirements for GCD as follows:

Minimum lot size	15,000 square feet
Minimums lot width	100 feet
Maximum building height	35 feet
Front yard setback	30 feet
Side yard setback	When abutting non-residentially zoned property: 10 feet, however, the Planning Commission may approve up to a zero setback if it can be demonstrated that the lesser setback will not adversely affect adjoining properties, and specifically light availability to existing or proposed buildings. Where abutting lots have buildings employing a common party wall no side yard shall be required. When abutting residentially used or zoned property: 40 feet
Rear yard setback	30 feet
Maximum lot coverage	60% of the total lot area

Section 21-8 (B) of the Ordinance outlines the requirements for granting of a non-use variance. The section states that a non-use variance may be allowed by the Zoning Board of Appeals **only in cases where there is reasonable evidence of practical difficulty** in the official record of the hearing and that all of the following conditions are met:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;
2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Unique circumstances include exceptional narrowness, shallowness or shape of a specific property on the effective date of this article, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this article would involve practical difficulties;
3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance;
4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood;



5. The variance will not impair the intent and purpose of this ordinance;
6. The immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

Notifications for the variance requests were delivered to the affected neighbors in accordance with Michigan's Zoning Enabling Act (Public Act 110 of 2006) 125.3103, Section 103 (4).

Recommendation: Upon review of the application materials, validation of the facts reported, site inspection and evaluation of each of the criteria required for review and noted in this staff report, it is the recommendation of the Zoning Administrator that a proper amount of information has been provided to the Zoning Board of Appeals to render a denial of this appeal request.

Respectfully submitted,

Darwin Watson, Zoning Administrator
City of New Buffalo